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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,637	04/07/2004	Martin Debreczeny	TYHC:0041/FLE (P0396R)	8831

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EXAMINER

WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3768

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

NT

Office Action Summary	Application No. 10/820,637	Applicant(s) DEBRECZENY, MARTIN	
	Examiner Eric F. Winakur	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/16/04; 9/20/05</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 does not appear to further limit the structure of claim 1, from which it depends, since claim 1 as written does not include the light sources as part of the claimed structure. The fact that the light sources emit at different wavelengths (claim 4) does not alter the structure of the claimed first and second inlets. As such, claim 4 is not further limiting.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4 - 6, 8, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Vari et al. Vari et al. teach an optical measurement arrangement (Figure 2) that includes first and second light sources (including emitters at 775, 810, 904 nm) for obtaining oxygen saturation information that are connected with a spatially-homogenizing means including optical fibers (48, 50, 52) for illuminating tissue and collecting light for transmission to a sensor 44. Details of the fiber arrangement are

given in column 5, lines 13 - 37, and in particular, Vari et al. teach that the optical fibers are randomly mixed to provide a uniform mix of the fibers.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vari et al. as applied to claims 2 and 6 above. Vari et al., as described in paragraph 4 above, teach all of the features of the claimed invention except that the fibers are surrounded by a cladding. However, use of cladding to surround optical fibers for protection and providing a known index of refraction around the optical fibers was extremely well known in field of fiber optics at the time of the invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Vari et al. with cladding around the various optical fiber branches that they disclose, since it was well known in the art at the time of the invention to surround optical fibers with a cladding to provide protection and a known index of refraction and it has generally been held to be within the skill level of the art to include a well known element in an arrangement for its known purpose.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vari et al., as applied to claim 8 above, and further in view of Jeffcoat et al. Vari et al. teach an optical measurement arrangement that includes emitters for determining oxygen

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saturation information (column 6, lines 10 - 25) but do not particularly teach that one of the sources emits essentially in the red region of approximately 660 nm. Vari et al. teach that other optical arrangements may be used in their device (column 8, lines 59 - 67). Jeffcoat et al. teach an alternate optical measurement arrangement (Figure 4), similar to that of Vari et al., that includes an emitter 16 for 660 nm light and a second emitter 17 for 940 nm light (column 3, lines 4 - 15) that are connected by optical fibers by a single sending path 13 to a measurement location. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Vari et al. with an emitter for 660 nm light, since Vari et al. teach that additional wavelengths may be included in their arrangement and Jeffcoat et al. teach that 660 nm light is useful in measuring oxygen saturation information.

Conclusion

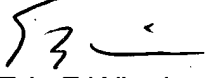
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jobsis (Figure 3, 4) and Jobsis et al. (Figure 12, 12A, 13) teach measurement arrangements wherein multiple wavelengths of light are provided to a subject via fiber optical cables. Pawluczyk et al. (Figure 2), Delpy et al. (Figure 4), and Harjunmaa et al. (Figures 2 - 4) teach optical measurement arrangements wherein light from multiple sources is mixed before interaction with the measured sample.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571/272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Eric F Winakur
Primary Examiner
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